

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DARRYL C. HUTCHISON,)	
)	No. CV-07-0197-JPH
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	

BEFORE THE COURT are cross-motions for summary judgment, noted for hearing without oral argument on January 7, 2008. (Ct. Rec. 18, 21). Plaintiff Darryl C. Hutchison ("Plaintiff") filed a reply brief on January 7, 2008. (Ct. Rec. 23). Attorney Maureen Rosette represents Plaintiff; Special Assistant United States Attorney David M. Blume represents the Commissioner of Social Security ("Commissioner"). The parties have filed a consent to proceed before a magistrate judge. (Ct. Rec. 6). After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 21) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 18).

JURISDICTION

On April 20, 2004, Plaintiff filed a second application for Disability Insurance Benefits ("DIB"),¹ alleging disability since August, 1989. (AR 90-93). Plaintiff's second application for DIB

¹Plaintiff filed a prior application for DIB on April 30, 2002, with disability alleged since January 1, 1987. (AR 86-89). Plaintiff's prior application for DIB was denied, and Plaintiff did not further pursue the application. (AR 17).

1 was denied initially and on reconsideration. An administrative
2 hearing was held before Administrative Law Judge ("ALJ") Richard
3 Say on July 27, 2006. (AR 1149-1182). On September 14, 2006, the
4 ALJ issued a decision finding that Plaintiff was not disabled.
5 (AR 17-24). On May 24, 2007, the Appeals Council denied
6 Plaintiff's request for review. (AR 6-8). Therefore, the ALJ's
7 decision became the final decision of the Commissioner, which is
8 appealable to the district court pursuant to 42 U.S.C. § 405(g).
9 Plaintiff filed an action for judicial review pursuant to 42
10 U.S.C. § 405(g) on June 20, 2007. (Ct. Rec. 1).

11 The ALJ's review of Plaintiff's earnings record revealed that
12 Plaintiff earned sufficient quarters of coverage to remain insured
13 for DIB purposes through March 30, 1992. (AR 17, 1153).
14 Therefore, in order to be eligible for DIB, Plaintiff had the
15 burden to show that he was under a disability, as defined by the
16 Social Security Act, prior to March 30, 1992, his date last
17 insured. The relevant time period under review is thus from
18 August 1, 1989 (Plaintiff's alleged disability onset date), to
19 March 30, 1992 (Plaintiff's date last insured).

20 STATEMENT OF FACTS

21 The facts have been presented in the administrative hearing
22 transcripts, the ALJ's decisions, the briefs of both Plaintiff and
23 the Commissioner and will only be summarized here. Plaintiff was
24 45 years old on his date last insured. (AR 22). Plaintiff
25 completed a four-year college program and received his Bachelor's
26 degree in 1994. (AR 107). He has past work experience as a
27 mechanic. (AR 102, 141-146). He alleges disability as of August
28 1, 1989, due to post traumatic stress disorder, brain tumor,

1 injury to left ankle and degenerative arthritis in back and hips.
2 (AR 101). However, Plaintiff's brain tumor was not diagnosed
3 until December of 2001. (AR 1156). Plaintiff reported "[d]ue to
4 back & leg pain I couldn't continue to work on concrete floors.
5 Also PTSD had been affecting my ability to deal with supervisors &
6 do my work." (AR 101). Plaintiff testified that left ankle and
7 lower back problems, as well as a post traumatic stress disorder,
8 kept him from working before March 1992. (AR 1166-1167, 1174).

9 **SEQUENTIAL EVALUATION PROCESS**

10 The Social Security Act (the "Act") defines "disability" as
11 the "inability to engage in any substantial gainful activity by
12 reason of any medically determinable physical or mental impairment
13 which can be expected to result in death or which has lasted or
14 can be expected to last for a continuous period of not less than
15 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
16 Act also provides that a Plaintiff shall be determined to be under
17 a disability only if his impairments are of such severity that
18 Plaintiff is not only unable to do his previous work but cannot,
19 considering Plaintiff's age, education and work experiences,
20 engage in any other substantial gainful work which exists in the
21 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
22 Thus, the definition of disability consists of both medical and
23 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
24 (9th Cir. 2001).

25 The Commissioner has established a five-step sequential
26 evaluation process for determining whether a person is disabled.
27 20 C.F.R. §§ 404.1520, 416.920. Step one determines if he is
28 engaged in substantial gainful activities. If he is, benefits are

1 denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If he is not, the
2 decision maker proceeds to step two, which determines whether
3 Plaintiff has a medically severe impairment or combination of
4 impairments. 20 C.F.R. §§ 404.1520(c), 416.920(c).

5 If Plaintiff does not have a severe impairment or combination
6 of impairments, the disability claim is denied. If the impairment
7 is severe, the evaluation proceeds to the third step, which
8 compares Plaintiff's impairment with a number of listed
9 impairments acknowledged by the Commissioner to be so severe as to
10 preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d),
11 416.920(d); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment
12 meets or equals one of the listed impairments, Plaintiff is
13 conclusively presumed to be disabled. If the impairment is not
14 one conclusively presumed to be disabling, the evaluation proceeds
15 to the fourth step, which determines whether the impairment
16 prevents Plaintiff from performing work he has performed in the
17 past. If Plaintiff is able to perform his previous work, he is
18 not disabled. 20 C.F.R. §§ 404.1520(e), 416.920(e). If Plaintiff
19 cannot perform this work, the fifth and final step in the process
20 determines whether Plaintiff is able to perform other work in the
21 national economy in view of his residual functional capacity and
22 his age, education and past work experience. 20 C.F.R. §§
23 404.1520(f), 416.920(f); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

24 The initial burden of proof rests upon Plaintiff to establish
25 a *prima facie* case of entitlement to disability benefits.
26 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
27 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
28 met once Plaintiff establishes that a physical or mental

1 impairment prevents him from engaging in his previous occupation.
2 The burden then shifts to the Commissioner to show (1) that
3 Plaintiff can perform other substantial gainful activity and (2)
4 that a "significant number of jobs exist in the national economy"
5 which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498
6 (9th Cir. 1984).

7 STANDARD OF REVIEW

8 Congress has provided a limited scope of judicial review of a
9 Commissioner's decision. 42 U.S.C. § 405(g). A court must uphold
10 the Commissioner's decision, made through an ALJ, when the
11 determination is not based on legal error and is supported by
12 substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995
13 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
14 1999). "The [Commissioner's] determination that a plaintiff is
15 not disabled will be upheld if the findings of fact are supported
16 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
17 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence
18 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
19 1112, 1119 n.10 (9th Cir. 1975), but less than a preponderance.
20 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
21 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
22 573, 576 (9th Cir. 1988). Substantial evidence "means such
23 evidence as a reasonable mind might accept as adequate to support
24 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
25 (citations omitted). "[S]uch inferences and conclusions as the
26 [Commissioner] may reasonably draw from the evidence" will also be
27 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
28 On review, the court considers the record as a whole, not just the

1 evidence supporting the decision of the Commissioner. *Weetman v.*
2 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v.*
3 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

4 It is the role of the trier of fact, not this court, to
5 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
6 evidence supports more than one rational interpretation, the court
7 may not substitute its judgment for that of the Commissioner.
8 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
9 (9th Cir. 1984). Nevertheless, a decision supported by
10 substantial evidence will still be set aside if the proper legal
11 standards were not applied in weighing the evidence and making the
12 decision. *Browner v. Secretary of Health and Human Services*, 839
13 F.2d 432, 433 (9th Cir. 1988). Thus, if there is substantial
14 evidence to support the administrative findings, or if there is
15 conflicting evidence that will support a finding of either
16 disability or nondisability, the finding of the Commissioner is
17 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
18 1987).

19 ALJ'S FINDINGS

20 The ALJ found at step one that Plaintiff has not engaged in
21 substantial gainful activity during the period from his alleged
22 onset date through his date last insured. (AR 19). At step two,
23 the ALJ determined that, through the date last insured, Plaintiff
24 had the severe impairments of post traumatic stress disorder and a
25 left ankle injury. (AR 20). However, the ALJ concluded that
26 Plaintiff did not have an impairment or combination of impairments
27 listed in or medically equal to one of the Listings impairments.
28 (AR 21). The ALJ found that, through Plaintiff's date last

1 insured, he had the residual functional capacity ("RFC") to
2 perform at least sedentary level work activities with limitations
3 on repetitive motion with his left foot, overhead activities and
4 vibrations and, because of mental problems, was limited to short
5 simple instructions and superficial contact with others. (AR 22).

6 At step four of the sequential evaluation process, the ALJ
7 determined that Plaintiff would have been unable to perform his
8 past relevant work prior to March 1992. (AR 22). However, based
9 on the testimony of the vocational expert and considering
10 Plaintiff's age, educational background, work experience and RFC,
11 the ALJ concluded that Plaintiff could perform a significant range
12 of sedentary work that existed in significant numbers in the
13 national economy prior to March 1992. (AR 23-24). Accordingly,
14 the ALJ determined at step five of the sequential evaluation
15 process that Plaintiff was not disabled within the meaning of the
16 Social Security Act at any time from his alleged onset date
17 through March 31, 1992, his date last insured. (AR 24).

18 ISSUES

19 Plaintiff argues that he was more limited from a
20 psychological standpoint than as determined by the ALJ. (Ct. Rec.
21 19 at 11-17). This Court must uphold the Commissioner's
22 determination that Plaintiff is not disabled if the Commissioner
23 applied the proper legal standards and there is substantial
24 evidence in the record as a whole to support the decision.

25 DISCUSSION

26 Plaintiff asserts that the ALJ failed to provide sufficient
27 reasoning for rejecting the opinions of Drs. Pollack, Grismer,
28 Riodica and Giffen regarding his psychological functioning. (Ct.

1 Rec. 19 at 11-17). The Commissioner responds that the ALJ
2 properly evaluated the medical evidence of record and properly
3 concluded that Plaintiff's psychological limitations restricted
4 him to only performing short, simple work instructions with only
5 superficial contacts with others. (Ct. Rec. 22 at 7-15; AR 20-
6 22).

7 With respect to Plaintiff's mental limitations, the ALJ found
8 that Plaintiff was limited to short simple instructions and
9 superficial contact with others. (AR 22). In making this
10 determination, the ALJ evaluated the medical evidence of record
11 pertaining to Plaintiff's mental ability. The ALJ determined
12 that, while PTSD and depression were mentioned in the record
13 during the relevant time period, the evidence demonstrated that
14 the severity of Plaintiff's mental limitations produced only mild
15 limitations of activities of daily living, moderate limitations of
16 social functioning, mild limitations of concentration, persistence
17 or pace, and no episodes of decompensation of extended duration.
18 (AR 20-21).

19 With respect to Plaintiff's mental limitations during the
20 relevant time period, August 1, 1989 to March 30, 1992, the ALJ
21 indicated as follows:

22 In 1989, the claimant was treated for "situational adjustment
23 reaction" and he was a recovering "drug addict and alcoholic"
24 [].

24 . . .

25 [W]hile treatment notes from Okanogan Valley Clinic mentioned
26 depression and post-traumatic stress disorder in 1989-1991.
27 The claimant was treated primarily for gastrointestinal
28 problems. A note dated January 28, 1991 describes depression
and PTSD and says that the claimant was receiving Elavil for
the condition []. In a follow-up for depression on March 20,
1991, the claimant increased the Elavil to 200 mg and he
reported doing significantly better. He increased the dose

1 to 250 mg and reported nightmares and hallucinations. Upon
2 reducing the dose to 200 mg again, he was doing fine and had
3 done some part-time mechanic work and exploring vocational
4 rehab. The notes do not mention PTSD or depression again
5 until February 1992 when insomnia and a long history of PTSD
6 are merely mentioned with no discussion of ongoing treatment.

7 (AR 20).

8 Plaintiff was seen by William A. Gromko, M.D., in November
9 1989. Dr. Gromko noted that Plaintiff was engaged in
10 psychological counseling, but did not want to take medications.
11 (AR 182). Dr. Gromko prescribed Fluoxetine, and, in February
12 1990, Plaintiff requested an increase in his anti-depressant
13 medication. (AR 182-184). Plaintiff was seen almost monthly at
14 the Okanogan Valley Clinic for ongoing gastrointestinal problems
15 from November 1990 to September 1991. (AR 211-239). However,
16 despite the frequency of these visits, the medical reports make
17 only limited references to mental health complaints. (*Id.*)

18 There is little evidence of Plaintiff's psychological
19 symptoms or limitations prior to the expiration of his insured
20 status. However, the notes from Plaintiff's physicians indicate
21 that although he had difficulty with sleep, nightmares and feeling
22 down, the symptoms were sufficiently controlled by medication.
23 Impairments that can be controlled effectively with medication are
24 not disabling for the purpose of determining eligibility for
25 benefits. *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001,
26 1006 (9th Cir. 2006), *see also*, *Odle v. Heckler*, 707 F.2d 439, 440
27 (9th Cir.1983) (affirming a denial of benefits and noting that
28 the claimant's impairments were responsive to medication).

Plaintiff nevertheless contends that, as evidenced by the
medical reports of Drs. Pollack, Grismer, Riodica and Giffen, he
had greater psychological limitations during the relevant time

1 period. (Ct. Rec. 19 at 11-17). However, each of these medical
2 professionals evaluated Plaintiff after the expiration of the
3 relevant time period in this case. Although evidence from outside
4 of the relevant period of time may be deemed useful information,
5 it is irrelevant to the extent that it does not address claimant's
6 medical status during the relevant period at issue in this action.

7 On February 12, 1993, Joseph F. Grismer, M.D., examined
8 Plaintiff. (AR 1130-1133). The report indicates that a February
9 26, 1990 examination determined that Plaintiff continued to have a
10 diagnosis of PTSD, characterized by recurrent recollections of the
11 events of Vietnam and recurrent nightmares and flashbacks when he
12 hears helicopter sounds. (AR 1130). The report also references
13 Plaintiff's past treatment for depressive symptomatology. (AR
14 1130). Although Dr. Grismer noted Plaintiff's difficulties with
15 social interactions and concentration at the time of his
16 examination, he indicated that Plaintiff was able to maintain his
17 college course work and interact with others in the classroom.
18 (AR 1131-1132). Dr. Grismer diagnosed PTSD, delayed, and gave
19 Plaintiff a Global Assessment of Functioning ("GAF") score of 55.²
20 (AR 1132-1133). While Dr. Grismer's report refers to a 1990
21 diagnosis of PTSD and past treatment for depressive
22 symptomatology, his report included no specific assessment of
23 Plaintiff's functional capacity prior to the date last insured.
24 Accordingly, the report fails to address Plaintiff's specific
25 ///

26
27 ²A GAF of 60-51 reflects: Moderate symptoms or moderate
28 difficulty in social, occupational, or school functioning. See
DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 32 (4th ed. 1994).

1 mental condition or limitations during the relevant period at
2 issue.

3 On August 20, 1996, Romeo Reodica, M.D., examined Plaintiff.
4 (AR 656-660). It was noted that Plaintiff had a 30% disability
5 for service-connected PTSD and that, at the time of Dr. Reodica's
6 evaluation, all information was provided by Plaintiff since "the
7 C-file was not available and the clinical chart contained minimal
8 information." (AR 656). Dr. Reodica diagnosed PTSD, delayed, and
9 gave Plaintiff a GAF score of 45.³ (AR 660).

10 Dr. Reodica's assessment, based entirely on information
11 provided by Plaintiff in August of 1996, included no discussion or
12 assessment of Plaintiff's capacity prior to the date last insured.
13 In fact, Dr. Reodica noted that the evaluation was performed to
14 "update information and symptoms from February 1993." (AR 656).
15 Accordingly, the undersigned finds Dr. Reodica's findings
16 irrelevant because he fails to address Plaintiff's medical status
17 during the relevant period at issue.

18 Plaintiff was examined by David Griffon, M.D., on September
19 12, 2001. (AR 548-551). It was noted that Plaintiff had a 70%
20 disability for service-connected PTSD and that Plaintiff had been
21 diagnosed and treated for an inoperable brain tumor in 2000. (AR
22 548-549). Dr. Griffon diagnosed PTSD, chronic, and a cognitive
23 disorder, not otherwise specified (mild aphasia and cognitive
24 slowing associated with glioma and radiation therapy) and gave

25
26 ³A GAF of 50-41 reflects: "[s]erious symptoms (e.g.,
27 suicidal ideation, severe obsessive rituals, frequent
28 shoplifting) or any serious impairment in social, occupational,
or school functioning (e.g., no friends, unable to keep a
job)." DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS-IV 32 (4th
ed. 1994).

1 Plaintiff a current GAF score of 25.⁴ Dr. Griffon's medical
2 report contained no discussion or assessment of Plaintiff's
3 capacity prior to the date last insured. Therefore, his findings
4 are not relevant to Plaintiff's medical status during the period
5 of time at issue in this case as well.

6 On April 25, 2006, Plaintiff was examined by Dennis R.
7 Pollack, Ph.D. (AR 1134-1143). Dr. Bostwick noted that
8 Plaintiff's clinical scores indicated Plaintiff is depressed,
9 angry, resentful and dependent and suggest that he has difficulty
10 getting along with others and following social norms. (AR 1139).
11 Dr. Bostwick stated "[i]t is clear from the record that Mr.
12 Hutchinson had emotional problems prior to 1991 that resulted in
13 an award for service related PTSD as a result of his service in
14 Vietnam. These problems alone cause him to be disabled." (AR
15 1139). Dr. Bostwick diagnosed PTSD, a pain disorder associated
16 with both psychological factors and a general medical condition,
17 and a dysthymic disorder, ruled out dementia due to a brain tumor,
18 and gave Plaintiff a GAF score of 50. (AR 1139).

19 On a mental medical source statement form, Dr. Pollack marked
20 that Plaintiff had only two marked limitation out of 20 areas of
21 functioning; that being his ability to perform activities within a
22 schedule, maintain regular attendance and be punctual within
23 customary tolerances and to complete a normal workday and workweek
24 without interruptions from psychologically based symptoms and to
25

26 ⁴A GAF of 30-21 is characterized as: "Behavior is
27 considerably influenced by delusions or hallucinations or
28 serious impairment in communication or judgment or inability to
function in almost all areas." DIAGNOSTIC AND STATISTICAL MANUAL OF
MENTAL DISORDERS 12 (3d ed. Rev. 1987).

1 perform at a consistent pace without an unreasonable number and
2 length of rest periods. (AR 1141). Dr. Pollack also marked that
3 Plaintiff had one moderate limitation, but otherwise found that
4 Plaintiff had no or mild limitations in all other areas of
5 functioning. (AR 1140-1142).

6 The ALJ rejected Dr. Pollack's opinion that Plaintiff was
7 disabled prior to 1991 because his examination was remote in time
8 and based on a faulty analysis. (AR 23). Not only did Dr.
9 Pollack's evaluation occur 14 years after Plaintiff's date last
10 insured, but also, on the date last insured, Plaintiff had
11 received only a 40 percent disability rating from the VA. This VA
12 disability rating does not indicate total disability as stated by
13 Dr. Pollack. Moreover, Dr. Pollack did not state when Plaintiff's
14 psychological difficulties first caused him to be completely
15 disabled, nor described the level of the limitations stemming from
16 his impairments prior to Plaintiff's date last insured. It is
17 further apparent from the record that Plaintiff's psychological
18 symptoms increased after he was diagnosed with a inoperable brain
19 tumor in 2000, making Dr. Pollack's 2006 retrospective opinion of
20 Plaintiff's 1991 abilities all the more speculative. *See, Johnson*
21 *v. Shalala*, 60 F.3d 1428, 1432-1433 (9th Cir. 1995). An ALJ must
22 give specific and legitimate reasons supported by substantial
23 evidence to reject the opinion of an examining physician. *Bayliss*
24 *v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). The undersigned
25 finds that the ALJ provided sufficient rationale, supported by
26 substantial evidence, to reject Dr. Pollack's opinion that
27 Plaintiff was disabled prior to 1991. (AR 23).

28 ///

1 With respect to Plaintiff's mental functioning, it is
2 significant to note that the Department of Veterans Affairs ("VA")
3 rated Plaintiff only 30% to 40% disabled for service connected
4 PTSD during the relevant time period. (AR 21, 656, 1131).
5 Plaintiff's VA disability rating was not elevated to 70% until
6 November of 1997 and was continued at that rate in September of
7 2001. (AR 166-171). The ALJ must consider the VA's findings in
8 reaching his decision. *Chambliss v. Massanari*, 269 F.3d 520, 522
9 (5th Cir. 2001). Because of the marked similarity between the two
10 federal disability programs, the ALJ must give great weight to a
11 VA determination of disability. *McCartey v. Massanari*, 298 F.3d
12 1072, 1076 (9th Cir. 2002). As noted by the ALJ, the VA ratings
13 indicate that the VA did not consider Plaintiff to be totally
14 disabled even well after his date last insured. (AR 21, 23). The
15 psychological limitations assessed by the ALJ during the relevant
16 time period, restrictions to short, simple instructions and only
17 superficial contact with others, accurately reflect the
18 limitations assessed by the VA ratings as well as the weight of
19 the record evidence.

20 The undersigned further finds it significant that Plaintiff
21 reported working full-time as a motorcycle mechanic in 1989 and
22 1990, after the alleged onset date of disability, August of 1989.
23 (AR 102, 110).

24 The ALJ is responsible for reviewing the evidence and
25 resolving conflicts or ambiguities. *Magallanes*, 881 F.2d at 751.
26 If evidence supports more than one rational interpretation, the
27 Court must uphold the decision of the ALJ. *Allen*, 749 F.2d at
28 579. It is the role of the trier of fact, not this Court, to

1 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. The
2 Court may not substitute its own judgment for that of the ALJ even
3 if it might justifiably have reached a different result upon de
4 novo review. 42 U.S.C. § 405(g). The ALJ's RFC finding is in
5 accord with the weight of the record evidence. Contrary to
6 Plaintiff's argument, the record does not support a more
7 restrictive psychological finding than Plaintiff being limited to
8 short and simple instructions and superficial contact with others.
9 (AR 22). Accordingly, the Commissioner did not err in so finding
10 in this case.

11 **CONCLUSION**

12 Having reviewed the record and the ALJ's conclusions, the
13 Court finds that the ALJ's decision is supported by substantial
14 evidence and free of legal error. Plaintiff is thus not disabled
15 within the meaning of the Social Security Act. Accordingly,

16 **IT IS ORDERED:**

17 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 18**)
18 is **DENIED**.

19 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 21**)
20 is **GRANTED**.

21 3. The District Court Executive is directed to enter
22 judgment in favor of Defendant, file this Order, provide a copy to
23 counsel for Plaintiff and Defendant, and **CLOSE** this file.

24 **IT IS SO ORDERED.**

25 **DATED** this 1st day of April, 2008.

27 S/James P. Hutton

28 JAMES P. HUTTON
UNITED STATES MAGISTRATE JUDGE